(1) 95-1224

Supreme Court, U.S.
F I L E D
JAN 29 1996
CLERK

No. 95-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA,

Petitioner,

v.

ALVIN EDWARD HOROWITZ, et al,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Edith Broida
Pro Se
P. O. Box 5941
Washington, D. C.
20016
301-681-2050

QUESTIONS PRESENTED

1. Whether a federal district court and appeal court prejudicially can make a clearly erroneous ruling on diversity of citizenship denying petitioner as a United States citizen access to federal jurisdiction guaranteed by the 14th and 5th Constitutional Amendments, and Article IV, Sec. 2, Article III, Sec.1 and 2 the liberty and freedom to choose the location of a permanent residence which meets all legal requirements declaring it her permanent domicile whenever she so decides, and proceed for her day in court against tort-feasing defendants who have caused her property appropriated to them by conspiracy with State judges, leaving said property in the possession of such malfeasors which is a governmental forfeiture of her property, and a deprivation of her civil rights.

2. Whether the appeal court had to reverse the district judge's acceptance of the Magistrate's clearly erroneous conclusions where the district judge having plaintiff's two simultaneously filed cases before him sets this case for trial on the merits although the Magistrate's Report is pending on the companion case, both cases raising the same issue of diversity against same defendants, making clear the district judge's total lack of knowledge and confusion about both cases, the companion case in this court, 95-914.

3. Whether the district judge was required to hold evidentiary hearing before him on this and the companion case, 95-914 (this court) as requested by Plaintiff on the substantive issue of diversity in both cases, and hold hearing de novo to review the testimony on domicile as required by federal rules after plaintiff objected to the Magistrate's Report.

4. Whether the district judge in setting this instant case for trial on the merits when only one defendant had been served, the other three resisting service, and notice by publication denied by magistrate, and again setting trial on the merits shows a complete lack of knowledge of the two cases before him, causing his dismissal of the two cases to be reversed.

5. Whether the appeal court can affirm the district court's dismissal for lack of diversity and deny oral argument where the district court clearly has refused to observe the law of evidentiary proof on the issue of legal domicile for diversity of citizenship jurisdiction and plaintiff has clearly proved diversity by legal domicile different from all defendants.

LIST OF PARTIES

Interested parties might be:

Honorable C. Clyde Atkins, federal district court, southern division, Miami, Fla., Senior Judge, presid-on this case and companion case, this court 95-914

Magistrate Ted E. Bandstra, presiding on issue of diversity of citizenship entering his Report accepted by Senior Judge

Appeal judges Eleventh Circuit Court, Anderson, Edmondson, Carnes

Parties to Cause:

Edith Horowitz Broida, Petitioner, Appellant, Plaintiff, eldest of two issue of decedent and his spouse

Alvin Edward Horowitz (a/k/a Alvin Alvyn) 2-year younger brother, second issue of decedent and his spouse.
Respondent, Appellee, Defendant.

Other Respondents,Appellees, Defendants.

Stephen Ronald Horowitz, oldest issue of Alvin Horowitz

Paula Horowitz Roth, second issue of Alvin Horowitz

Karen Horowitz Barnett Kaplan, third issue of Alvin Horowitz.

Betsy Horowitz Nieves Horowitz, fourth issue of Alvin Horowitz.

PETITIONER REQUEST THAT THIS COURT REVIEW THIS PETITION TOGETHER WITH THE PETITION IN 95-914 AND THE APPENDIX FILED WITH THAT PETITION AND THE REPLY IN THAT CASE. The appendix filed with the Petition contains the Report and Recommendation of the Magistrate accepted by the District Judge for dismissal of both cases. It is 18 pages and begins on page 5- 914 PetAp

Petitioner is referred to also as Plaintiff and Appellant herein.

TABLE OF CONTENTS

1. Questions Presented i
2. List of Parties iii
3. Table of Contents iv
4. Table of Authorities . . . iv
5. Opinions Below 1
6. Jurisdiction 2
7. Constitutional Provisions. 2
8. Statement of the Case . . . 3
9. Basis For This Suit In . . .10 District Court
10. Statement of the Case . . .17 in District Court
11. The Appeal in the Eleventh.26 Circuit
12. Conclusion 28

TABLE OF AUTHORITIES

L. Hawes v. Club Ecuestre. . .27 Commandante,598 F2d 698, 1st Cir,1979,p702
2. Morris v. Gilmer, 129 US . 25 315, 328 SCt 289, 32 LED 690, 1889

TABLE OF AUTHORITIES (CONT'D)

3. Prentis v. Atlantic, etc, .3
211 US 210, 1908

4. The Estate of Maurice ..13,14
Horowitz,et al, or Edith H.
Broida and Alvin Edward
Horowitz as Personal Repre-
sentatives of Estate of
Maurice (Moe) Horowitz,
Deceased, Appellants v.
City of Miami Beach, Appellee
3rd District Court of Appeals,
Florida, 1982

5. Tina B. Bennis v. State of. 28
Michigan, U.S. SCT,1995

U.S. Constitution 2
Art. III, Sec. 1,2
Art. IV, Sec 2
Fifth Amendment
14th Amendment

Title 28 USC 1254 (a) (c) . . . 2
1332 2, 17

Federal Rules 72,(b), 73 . . .20,25

Text: The Constitution of the. 3
United States, 1943
Thomas James Norton

EDITH HOROWITZ BROIDA, Appellant below, respectfully petitions for a writ of certiorari to review the ruling of the Eleventh Circuit Court of appeals which confirms the dismissal of her action against defendants which was a clearly erroneous decision denying the indisputable evidence she produced of legal domicile which provided her right to federal jurisdiction based on diversity of citizenship.

OPINIONS BELOW

No district court decision has been found, nor has the Eleventh Circuit ruling been reported. Appellate ruling affirming the lower court, without law citation entered April 27, 1995 with denial of motion for oral argument in the same ruling.(App 1 Petition for Rehearing was lost by the clerk, finally presented to the court, denied November 6 ,1995, and separate ruling, same date denying motion for oral argument.(App 2

December 29, 1995 the appeal court denied Appellant's Motion to expedite their ruling which appellant expected would affirm as the earlier ruling in companion case filed before this court 95-914 on November 8, 1995, which expedited ruling would have assisted Petitioner in filing this Petition together with 95-914, both having the same issue of diversity of citizenship federal jurisdiction (App 1

The case no. in appeal court is 93-5022, district court no. is 92-0298.

Petitioner Requests That This Court Reviews This Case and S.Ct 95-914 Pending Together.

JURISDICTION

The appeal court decision denying the petition for rehearing the jurisdiction of this Court is invoked under 28 U.S.C. 1254 (a) and perhaps(c.

CONSTITUTIONAL PROVISIONS

The 14th Amendment to the U. S. Constitution provides that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside", and, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States", " Nor shall any State deprive any person of life, liberty or property without due process of law", " nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the Constitution provides "no persons shall be deprived of life, liberty, or property without due process of law," and

Article IV, Section 2 of the U. S. Constitution "The citizens of each State shall be entitled to all Privileges and Immunities of citizens in the several states ", and

Article III, Section 1, " the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish; and Section 2, " The judicial power shall extend to all cases in law and equity arising under

this Constitution, the laws of the United States, ... to controversies affecting Citizens of different States. "

STATEMENT OF THE CASE

In this case this Court is confronted with an issue that affects the constitutional right of every citizen and even non-citizen of this Nation, the inalienable right, to move freely throughout this country from State to State to establish a desired residence for whatever reason that person holds without the interference and supervision if either state or federal government, or their courts, or those seeking to stop litigation that involves them as opposing parties, as in this cause of action.

" A State cannot tie up a citizen of another state having property within its territory, invaded by unauthorized acts of its own officers, to suits for redress in its own courts." (1908, U.S. Supreme Court, cited in The Constitution of the United States, Thomas James Norton, 1943, p142, Prentis v. Atlantic, 211 US 210, 1908.

If there is anything that is sacred to this Nation it is the freedom of movement of a free people. Unlike countries of other continents, as, for example, Europe and the Middle East, once a person is admitted to this country, or is native-born he/she may live anywhere in the Nation without displaying a passport for entry and without any question being asked as to the reason. Whereas in former times people basically spent their entire lives in one community,

after World War II, and particularly since the 60's as small farms have decreased and government and industry have proliferated, this Nations's people have been on the move and have even established residences in more than one location, and many thousands employed overseas, as well as hundreds of thousands of retirees residing most of each year in states other than their maintained legal domiciles.

The issue is the district court accepting a clearly erroneous conclusion of a Magistrate who held two hearings receiving oral and written testimony of the permanent residence of Plaintiff in Washington, D. C. continuously since January 1963 maintaining a physical residence with all the costs necessary for such maintenance, with proof of paying homeowner's insurance since 1976 continuously to the date of the hearings (and in the present) (See App, Letter of Liberty Mutual Insurance Company of Fairfax, Va. certifying such insurance since 1976 on Plaintiff's residence and insurance for the car in use at the time of the hearing and continuously up to that time. p 6.

Other written evidence was a statement from the Dade County Supervisor of Elections that Plaintiff had been a registered voter through 1986 but had not voted since then and had not reregistered and by law had been dropped after

notified she would be removed.(Ap 7 Plaintiff testified she deliberately gave up her right to vote in Florida which she had had since she registered at age 21, and voted absentee ballot during the years she lived in the District of Columbia and worked in federal agencies there since 1963. Plaintiff introduced evidence of a pleading she filed in a suit in 1987 federal court, the pleading being served on all defendants in this and companion case in this court 95-914 that although she had maintained her domicile in Florida, although removing all her property and establishing a permanent residence in Washington in January, 1963 she now has declared she has changed her domicile to her permanent Washington address, although now living temporarily in Miami, Fla.

Plaintiff testified that although having her only real permanent residence in Washington, D. C. since 1963 she maintained a fictional domicile at the home of her parents in Miami Beach, Fla so that she could retain her license in the Florida Bar which she had since 1954 after graduating cum laude, 5th in her 103 member class. In this way since her parents were legal residents in Miami Beach she was available to return to represent them in any legal actions, as well as her brother and his wife and four issue, and her daughter all of whom were residents of Dade County, Florida.

Plaintiff introduced evidence that she had to return to Miami Beach many times for her parent's needs. Thev

operated a business on Miami Beach in which Plaintiff had worked since she was 16 years old and on a full-time basis after college, and represented them in legal matters after she became a lawyer.

In 1967 she had to return to deal with an income tax problem they had See Ap p ,8 , and had to remain for a year and nine months managing the business after discovering that her father, the manager, having begun to lose his mental abilities, the business was facing bankruptcy. After bringing it out of bankruptcy, representing them in nine lawsuits against them by creditors, successfully, she closed the business and they retired. She returned to Washington. See Ap 9

Now she had to return to Miami due to illness of each , See her letter to the administrator of Mount Sinai Hospital on her father's stay there. Ap p -10. The letter was written from Washington., as was the earlier letter, prior to the near bankruptcy, to a business broker regarding selling the business. (Ap p 8

In 1973, again,a condemnation suit was begun against the parents' only real estate, their home. They called on her to protect them so as not to lose their home or at least receive fair market value for it which had not been offered since it had a high value for its contemplated use.

She investigated all the issues, retained counsel, returned to Washington but had to return again to change

counsel and make court appearance to do so. To counsel this was a routine case; to her parents this was a destruction to their lives having lived in that residence for 30 years.

Appellant, lawyer, educator, sociologist, and management and systems expert had been working in federal agencies as a youth specialist to create and direct programs for the educational and employment rehabilitation of high-school dropouts and for the improvement of the public schools. This was her reason for moving to Washington to work in these programs. Having a degree in education, rearing her own child, she had been active issues regarding education (Ap p 13- D. C. Model School Div.

Her own daughter was a school dropout after a frustrating school career, and she knew many such children.

Her work in Washington for the DePartment of Labor to create training programs for school dropouts mainly served disadvantaged youth. Having been a civil rights activist since she became a young adult, and involved with charitable and socially conscious organizations since then she was well qualified. She directed the first federal National Teacher Corps program in 1966, and coordinated the first federal Upward Bound program for the Model School Division in 1965 recruiting students from the four D. C. high schools who fit the poverty qualifications and academic ability for summer courses for college entry. App, p 20- (Letters from applicants)

Having closed her law office after ten years of practice when moving to Washington she listed herself at the office of a lawyer friend so that there would be someone to receive telephone calls from lawyers or judges. She opened a post office box to receive mail and to receive the forwarded mail from her residence in Washington, When she returned there she would send for her mail from Miami, and so, back and forth.

In July 1977 the eminent domain case went to trial. She had to change counsel twice before that, and after numerous attempts to find the necessary qualified real estate appraisser witness,she had caused the case to go to trial on the issue of the necessity for the taking. The trial judge dismissed the suit as there being no necessity based on her research of the condemnor's plans and actions.

The condemnor took an appeal and the trial judge was reversed. While an appeal was in progress to the Supreme Court of Florida ,(and Plaintiff had prepared the case for trial, for appeal to the 3rd District, and to the state Supreme Court) Plaintiff's mother suddenly died August 3, 1977. Her mutual and reciprocal only Will named Plaintiff and her brother as equal heirs and her husband Maurice (Moe) their father as first personal representative, and Plaintiff and her brother, 2 years younger than she, as successor co-personal representatives.

Her father Maurice was not capable of acting as personal representative. He hired a lawyer social acquaintance whom they had befriended a few years before. The lawyer believing his client to be very rich endeavored to drive a wedge between Plaintiff and her father since he knew she would keep him from taking control of Maurice.

Maurice was both physically and mentally ill. He had a bad heart and no longer had his wife of 60 years. Ap ,p10-11 He was 83.

His mutual and reciprocal Will was identical with his wife's leaving her estate equally to her two issue. Ann Horowitz had an investment portfolio and the residence had been half hers. Plaintiff was familiar with her assets since she had become their tax return preparer after the business closed. See Letter from Ann to Plaintiff about funds Plaintiff had told her to give to brother Alvin. Ap, p 9

Plaintiff could not abandon her father to this lawyer or abandon her interest in her mother's estate and she was the only one who knew how it should be handled to conserve it.

She remained to protect her father and her property doing all the actual personal representative work on her mother's estate for the 70 year old lawyer of her father.

Her mother's estate was not even a half million. Plaintiff had to litigate to stop the lawyer from trying to get too much money out of the estate for her father who was not capable. She had to prepare many pleadings and have court appearances. Maurice died six months after his wife and it soon was discovered that during the six months the lawyer had prepared seven Wills for Maurice contrary to the mutual and reciprocal Will adding his wife, daughter, and himself until the final Will a month before Maurice died with his family receiving three equal shares of a Will divided into thirteen shares, and with two for charities. It was also discovered he was taking money from Maurice. And it was discovered that for the first time in his life Maurice had opened a safe deposit box for which the lawyer had a key, and a key to the residence.

BASIS FOR THIS SUIT IN DISTRICT COURT

When the father died Plaintiff notified her brother to come to the courthouse and sign the necessary papers to substitute themselves for him as personal representatives and fire the lawyer. That day they saw the Will prepared by the lawyer and both were very angry.

Brother Alvin, his wife and children agreed they would fight the lawyer's Will and uphold the mutual and reciprocal Will of Maurice as the binding will, which it is by Florida law. They entered into an heirship agreement stating that they reject any will that leaves Maurice's estate other than by the terms of the mutual will, divided between his two children. All his issue were adults Three were married. Stephen Horowitz was an executive with the Howard Hughes Corp.

as a mathematician since about 1970. Paula was an office manager and her husband an electronics technician. Karen was a medical technician, and her husband a policeman. Betsy was in college. None had any children and had no such plans and do not now have any.

Plaintiff's daughter Stacie who was divorced and had a child was guaranteed the 1/13th share for her and her child after costs.

See Ap 14,15 for the pleadings filed by Plaintiff and Alvin and by Paula explaining the heirship agreement which was filed with the clerk in 1983 becoming irrevocable by state law.

As part of the agreement Plaintiff would act as attorney for the estate of her mother, personal representative with her brother cooperating, as attorney litigating on the invalid will, against the fees filed by the lawyer for $20,000,which her litigation reduced to $8000.for his work on the mother's estate.

Based on the agreement she now had to litigate in probate against the lawyer's will, during which she discovered the many wills he had prepared and money he had obtained from Maurice.

She, having spent five years to litigate on the eminent domain case for which the condemnor had offered only $100,000 and she now found an appraiser who valued it at between

$648,000 and $1,000,000. for a value trial and neither her brother or any of his family having been involved in that proceeding in any way or knowing much about it, it was agreed she would continue to try to obtain fair market value.

The agreement was entered into by all the family of Alvin, witnessed and notarized.

By January 1980 the litigation on the Will was concluded, and the other invalid claimants removed.. Plaintiff had to take an apartment and expend costs while maintaining her home in Washington.

Had the estate of her father been easily settled as well as the eminent domain cause she would have returned to her home in Washington at once. In July 1981 the eminent domain case went to jury trial on value with a new trial lawyer she obtained and for whom she prepared the case. The trial judge made some significant errors. She took the appeal herself and argued it. The jury verdict was reversed for the errors of the trial judge. Brother Alvin was at the trials and depositions on the Will contest; he was at the value trial and present for her appellate argument. The jury verdict of $300,000 reversed, a new trial might bring the $1,000,000. appraisal. See Ap 17 So. Reporter citation of appeal.

During all the years since 1977 Plaintiff could only return to her

home in Washington about once, sometimes twice a year. She did not rent it expecting everything to be resolved at any time. It was very expensive to maintain two residences but she never intended to remain in Florida.

When she returned to Washington each time she retrieved family letters and other papers such as those filed in the appendix.

In 1981 Stacie Broida Merrett retained Gene S.Rosen, her attorney to obtain the settlement she had been promised because she thought the eminent domain case had ended. Stacie had set up a distance between herself and her mother and grandparents. Out of sympathy for her situation of having a six year old child Plaintiff had made the agreement to give her the invalid Will shares- if there ever was anything. Alvin's issue also would receive some money, if there ever was any.

The reversal of the jury verdict was in 1982. Before a new trial was set attorney Rosen came into court and with the assistance of probate judges, despite statutes prohibiting it so late in an estate, he was able to remove Plaintiff and Alvin as personal representatives resulting in the appointment of Samuel S. Smith and Milton Kelner as guardian. He solicited Karen Barnett and perhaps obtained Melvin Trute as her lawyer to assist him in court since Trute specialized in probate and Rosen had no such experience, and neither did elderly Milton Kelner who once was a tort lawyer but now had judicial friends appointing him into cases as guardian.

Plaintiff had to file appeals to remove the invalid appointments. In her practice before going to Washington she had won at least 95% of her cases. Before the appointment of Smith she was successful in the eminent domain case. She discovered Smith had attached himself to the probate division and to The Florida Bar. He was appointed into cases and because of his activities in the Bar for many years he knew judges throughout the State and the country.

She was unable to have him removed although Gene Rosen had told her that if she would let her daughter be personal representative with him as her lawyer of course he could have Smith removed.

In 1984 she told her brother they should settle because she was now working for the lawyers and Smith was trying to get take control of the eminent domain case and hire his own lawyer for the new trial. Plaintiff managed to get a settlement of $400,000 for the estate.

It is difficult to understand how lawyers would involve themselves in a small estate, and judges as well. Decedent Maurice left $5400, and some money he was given from his wife's estate, and debts. He had the residence for which the condemnor had offered $100,000 in 1973. Had Plaintiff not wanted to give some money to her daughter a claim could have been made to put the residence in the mother's estate.

Immediately after the settlement on the residence Alvin and his issue retained Bernard Weksler to remove PLaintiff from Maurice's estate. Oddly enough, he came in representing even Karen who al-

ready had Melvin Trute as her lawyer and he obviously knew nothing about the estate case. He had been fired by Maurice in 1968 for misrepresentation and purportedly keeping escrow funds given to him by Maurice. He now wanted to punish Plaintiff because he too thought Maurice was a very rich man.

Finally the probate judge distributed the estate giving $100,000 in fees to Smith because as he said Plaintiff brought all the actions (for which she and her brother paid from the mother's estate which they kept open to fund the Maurice estate);$25,000 to Rosen for his successful illegal interference; $10,000 to Kelner for his interference without doing any benefit for the minor child about whom he knew nothing and never met; and the balance was divided among Alvin and his four issue who brought Trute, Rosen, and Weksler to court for the trial on the distribution to defraud Plaintiff.

The probate judge did not return all the money Plaintiff had loaned the estate, and refused to pay the claims she had filed initially for herself , and for herself and brother, on the chance that the Will lawyer might win, or the heirship agreement would be breached.

The distribution was made in 1989. After appealing it unsuccessfully because of Smith who defended,Plaintiff filed two suits in State Court; the companion suit which is before this Court on her claims against the decedent and money owed to the mother's estate by decedent and money owed to her which are

are all provided for by state probate law for suit in general jurisdiction against the debtor estate. She also filed a suit against Alvin and his issue for deliberately inducing her to enter into the agreement causing her to work professionally to benefit them, with the full intention initially of breaching that agreement despite Alvin's show of assisting her in resisiting the takeover by the marauding judge and attorneys. Ap 14,15

There was sufficient evidence that could be proved in a court of law. Alvin's issue contributed no money and no work to protect or create the increased assets of the estate, and they made no offer to return their ill-gotten gains.

The judges, the marauding attorneys lost at least another $200,000 to the estate which none of them are intelligent enough to understand. Neither it seems are Alvin and his issue intelligent enough. Had a new trial produced another $200,000 Alvin would have had half of that and he could give his children whatever they wanted from it.

Their primary goal was to cheat the Plaintiff who had given up her own career and was not earning any income for herself.

The two cases came before judges who had relationships with one attorney or the other and they were depriving Plaintiff of her civil rights.

Plaintiff refiled the cases in

federal district court hoping to have unbiased judge. Having a permanent continuing residence in Washington, DC and having changed her legal domicile in 1987, removing herself from the voting registry of Dade County, Florida or anywhere in Florida, and having had only a temporary residence there she had the right to access to federal court by diversity of citizenship with all defendants and the Estate.

The foregoing explains very clearly that Plaintiff's only reason for being in Miami, Florida after 1977 was the necessity for her to protect her property interests in the estate of her parents.

After both cases were dismissed in federal court, and Plaintiff filed appeals in both and had filed both in District Court simultaneously, Plaintiff returned to her permanent residence in Washington, the cases having been filed in 1992, and her return in 1993.

STATEMENT OF THE CASE IN DISTRICT COURT

This suit is filed five years after Plaintiff declared her relinquishment of legal domicile in Miami, Florida and the declaration that her residence in Washington is now her legal domicile. Title 28, Sec. 1332 permits such suit in federal court where plaintiff's legal domicile is in a different state than all the defendants.

Both cases were assigned to Senior Judge Clyde C. Atkins. Plaintiff filed a motion for the Judge to hear both cases but he assigned them each to a different magistrate.

First, Plaintiff had difficulty in

service by process server against Alvin and each of the three issue of his in Miami. The process server went to Paula where there was a party and two men came to the door and said she had moved away. The two men were her husband and Karen's new husband. Pl. returned with the process server who made a return on the first attempt, and because Karen had a new address (a house she had bought for herself and new husband with the distribution) which Plaintiff did not know his name, and Betsy had an address which Plaintiff had to spend considerable time to uncover, with her husband, the process server was told to serve all the complaints in both cases, for Alvin, and her two sisters on Paula. Plaintiff waited nearby and Paula threw them all on the lawn while he made his announcement.

It was impossible to serve Alvin because his wife had died in 1985. He lived behind a high fence and the property was filled with high trees which he grew. There was no doorbell or light on the steet, and the process server would not jump the fence. Moreover, the house could not be seen and having sold his business and business building in 1985 for $431,000 he now traveled selling several patented gardening products he manufactures and patented.

Melvin Trute filed a Motion to Strike service which the Magistrate granted. Weksler filed an Answer presumably on behalf of Paula but denying the charges of the Complaint on behalf of all the defendants. Plaintiff could not go to trial against one Defendant, and Alvin is the one with probably a million dollars. Moto hold the Answer good as against all

was denied by the Magistrate; motion to serve notice by publication was denied by the Magistrate. Magistrate Turnoff did his best to stop the suit.

The companion case had been assigned to Magistrate Bandstra, this Court no. 95-914.

The Judge of the case, Senior Judge Clyde C. Atkins, probably well over the age of 70, who had been presiding over many public issue cases such as the rights of the homelss to live on the street, set this cause for pre-trial conference at which Plaintiff appeared, and Paula with attorney Weksler. They stood together on one side: Plaintiff on the other. Despite the microphones the Judge understood nothing of what was said. Plaintiff tried to explain the issue of service not having been made on all the defendants and Weksler having answered for all. There was no understanding and no relief from the Judge. His only concern was that the parties should have prepared pretrial schedule. BUT THE CASE WAS NOT READY FOR TRIAL WITHOUT SERVICE ON THE DEFENDANTS.

He also had not recognized who was the Plaintiff and the defendant and responded to Plaintiff that "she could act pro se" meaning Paula, but Paula was there with Weksler as her attorney.

Weksler raised the issue of domicile. The judge said that is evidentiary. He withdrew the notice for trial and directed the issue of domicile to the Magistrate Turnoff who did not plan to hold an evidentiary hearing. Plaintiff move that the Judge wait for this case

while the issue of diversity would be heard by Magistrate Bandstra in the companion case since Bandstra had already set hearing on that case as was appropriate if there was any question on domicile.

Before the Report was rendered by Magistrate Bandstra the Judge again set this case for trial. Attorney Weksler who was served with the Notice of Trial moved to have himself substituted by attorney Martone, who had filed a motion to dismiss for Betsy Nieves although there was no return of service for Betsy in the court file. Plaintiff had already moved for a default against Betsy, which is probably the reason attorney Martone filed his motion to dismiss. His motion was late. She knew about the suit when her sister Paula was served and her Answer was due when Paula's was filed. The default should have been granted because a defendant cannot enter a case at will, but must abide by federal rules.

The Judge dismissed the case based on the motion of Alexander Martone for Betsy Nieves, who should have already had a default entered against her.

After Judge Atkins was served notice by Plaintiff that the Report of Magistrate Bandstra was awaited he withdrew the Notice of Trial and when the Report and Recommendation was made he denied the motion of Plaintiff asking for a complete review de novo as provided by federal Rule 72 (b) " The district judge to

whom the case is assigned shall make novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this Rule."

The Magistrate's Report was a jumble of misinformation and refusal to accept the proved existing continuous physical residence of Plaintiff in WAshington as her declared domicile. Instead the Report compares a refusal to divulge the address in Washington or to divulge the address of Plaintiff's temporary residence in Miami because the defendant's are her enemies and she doesn't trust Ap22 them. And although the Magistrate gave the defendants the opportunity to take a deposition thinking they would make some great discovery- they did not and still did not produce any proof that she not have a physical residence in Washington. They questioned her having a Florida license tag which she explained that she drove the car in Florida, titled it in Washington but if it had out-of-state tags she would have to pay a $400 tax to bring it into the State. Ap23&24;

The Magistrate's Report even misstates that the eminent domain cause was completed after five years from 1972 and she returned to Washington, No, her mother died in 1977 and she had just had a trial on the issue of necessity which was won, and then the condemdnor took an appeal, and she did not return to Washington then, except for a few days. The eminent domain case continued until 1984 after the Estate of Maurice was opened and Plaintiff continued under the heirship agreement to litigate that case as

See Mag. Report,914 PetApp,p 11,12,13

described above, and the citation of the second appeal of the jury verdict is sufficient evidence of that. The Report further states other misinformation, that she has "continuously spent the last sixteen years embroiled in litigation concerning the probate of her parent's estates." She was engaged in the eminent domain litigation from 1973 to the deaths of her parents in 1977 and 78 and then for the Estate until August 1984 when the condemnor took possession of the residence. She was engaged in the estate probates from August 1977 and continuing to this day.

Her campaign brochure lists her educational accomplishments but they were not acquired in 1986, but her last studies on scholarship from the U. of Miami to study International Law was in 1958. The organizations she named on the brochure she had belonged to over a lifetime. She was not now a a member of any of them at the time of filing the lawsuit in 1992.

The Magistrate who had been on the Court for a few years- five- and a lawyer as an Assistant Attorney-General befor had little knowledge of the usual requirments of a suit or the general knowledge attributed to lawyers. The defendant attorneys also lacked that kind of knowledge, one of them offered that residents of the District of Columbia not being residents of a State lose the right to enter federal court. A statement the Magistrate grasped upon at once until it was corrected by Plaintiff.

The Report finds it significant that Plaintiff has a post office box in Miami Beach and has an answering service therefore she is domiciled in Florida.

In reading the Report Plaintiff has the impression that it was prepared by a female clerk who entered all this information hoping that the good judge would pick it up and reverse it.

NO LITIGANT SHOULD BE SUBJECTED TO A JUDGE WHO IS SO OBVIOUSLY CONFUSED AS WAS THIS JUDGE, AND WHO DENIED PLAINTIFF HEARINGS BEFORE HIM ON THIS SUBSTANTIVE ISSUE DETERMINING HER RIGHT TO ACCESS TO FEDERAL COURT WHICH IS HER CONSTITU - TIONAL RIGHT

Plaintiff did not <u>run for judge</u>. Plaintiff ran against a judge who came up for election who was the Judge who interfered in the estate and appointed Sam Smith and Milton Kelner. She considered him incompetent (he had previously been an administrative judge in the criminal division in county court, and was reassigned to the probate division which had been redelegated from county court to circuit court by new state law. He no real experience as a judge or a lawyer, in civil or probate jurisdiction)

Plaintiff did not change her intention to return to Washington. She had never before run for Judge, and could have been appointed years before if she wanted it. Florida law requires a Judge to retire at age 70. However, if she had defeated the Judge she could have been installed and then resigned. In Florida once a judge is defeated for re-election he can never be a judge again.

And in Florida a state judge must resign at age 70. Plaintiff was 68 and could have no more than 2 years in office if she even stayed. In fact that issue came up in a question from a female attorney who obviously wanted to vote for Plaintiff who was speaking before a Bar lunch-

luncheon. "What good will it do if you must then resign at 70" Plaintiff responded " You will be able to seek the appontment of a qualified Judge replacement to the one in office." As a result of her run against the judge attorneys Weksler and Rosen called the Miami Herald and told lies about Plaintiff painting her as someone who was wrongfully involved in the EStates which the paper printed, and later Plaintiff in an article by the Editorial page editor found him stating that his best friend is a lawyer who is the best friend of that incumbent judge. Perhaps those lies are what influenced judges against her.

The Report states the Magistrate doesn't believe her. He doesn't believe the proof because it suits him not to believe.

Plaintiff has the right to decide what is her domicile. The Magistrate might have met Plaintiff in one of the ten countries she was in between 1955 and 1966 and not believed that she was nevertheless an American citizen because he didn't want to believe it. He was applying for appointment before a committee of lawyers for appointment as a federal judge. There were five lawyers opposing Plaintiff and they might have some input against him if he held in her favor, and that is why he ruled against her, paying no attention to the facts. Plaintiff could have had her primary physical residence in Miami and decided to move it to any other place the day before filing the suits and it would have been a valid change of domicile. As it is she had made the change five years before, and since she already had a permanent residence she did not have to change anything other than give up her voting rights in Florida, which she did immediately after her last vote in 1986. But he did not challenge that

she lived permanently in Washington working every day in federal agencies and was not in Miami but claimed it as her legal domicile although she had no residence there other than her parents' home. Plaintiff could own a residence in twenty different places and decide which one is her domicile and not own any,and change her domicile as often as she wants. The only thing she can't do is claim domicile in one state and vote in another.

Supreme Court case, Morris v. Gilmer states it very clearly, 129 US 315, 328 SCT 289, 32 LED 690, 1889, that every citizen has the right to change domicile whenever they wish with no period of residence necessary.

Federal Rule 72 (a) provides that only non-dispositive issues can be assigned to a magistrate for disposition, and plaintiff did not consent toa Magistrate was repeatedly denied hearing by the judge while he was setting this case for trial, as the pleadings prove.

Plaintiff has been deprived of her due process right to a competent judge and a hearing before a competent judge. as Rule 72 provided she should have.

A reading of the Magistrate's Report and a comparison of it with the multitude of written evidentiary proof filed by plaintiff, some of it in the Appendix of the Petition in this Court in case 95-914 and the Appendix in her Reply, and in the Appendix in this cause, and the Complaint in both cases, and her testimony shows the Magistrate's Report to be a hodgepodge of misstated information and refusal prejudicially to accept the proofs.

Numerous of the people employed in this Supreme Court live in other states but work every day at the Supreme Court

and one woman in the Clerk's office drives from the State of West Virginia every day and back. This is probably true of some of the Justices of this Court, and it may also be that some Supreme Court Justices retain their domiciles in the State from which they originally came although working every day and for many years of their lives at this Court.

Samuel Smith,since his graduation from law school in 1961,worked every day at his brother's law firm. Sam has his home in Miami, but the law firm is on Miami Beach, a different municipality. In the years since 1977 with her enforced stay in Miami Plaintiff would have been happy to be able to drive from her Washington residence every day and not have to establish the cost of another residence.in Miami.

THE APPEAL IN THE ELEVENTH CIRCUIT

This case, 93-5022 and 93-5023 were filed simultaneously in the district court and on appeal. Plaintiff moved the same appeal court panel review both. Plaintiff raised all the issues of Rule 72, the confusion of the district judge, the lack of service on all defendants, the late filing of Martone for Betsy, and all issues raised here, and presented the irrefutable evidentiary proof of her legal domicile, and requested oral hearing. The court denied all motions and oral argument in its final ruling. Shortly before the ruling they had held arguments in Miami where all the defendants live and could have notified Plaintiff to appear.

The appeal court affirmed the district court with no citation of law, without addressing any of the issues of lack of due process of Rule 72, 73: Petitions for Rehearing were lost by the Clerk,which entered the mandate. Appellant had to refile the Petitions and start mailing everything certified. The Court then denied Appellant's motion for expedition of their ruling so that she could bring this case for review at the same time as the one in this Court on which the appeal court had entered its decision in August.Apl

The case of Hawes v. Club Ecuestre Commandante, 598 F2d 698, 1st Cir,1979 cited by the Magistrate,in support of his decision,in fact supports Plaintiff. There the appeal court reversed a district court which denied diversity on similar kinds of facts. The only time that a change of domicile is denied is when a real physical domicile has not been created. Plaintiff indisputably proved she had a physical domicile since January 1963, never removed, in Washington, D. C. although she had been declaring a former physical domicile where she no longer lived on a daily basis, and from which she had physically removed her property. She had the right to declare her existing physical domicile in Washington as her one legal domicile at any time she wished as long as she removed her legal voting rights from the former, which she did, five years before filing these suits in district court.

The appeal court did not bother to read the briefs and review the facts. They would have seen the completely false statement that Plaintiff did not file the insurance policies. They had the complete file in which Plaintiff had filed the 1st page of the Homeowner's policies for '89, '90, '91,'92- which was unncecessary.

A person can't get homeowner's insurance without a home. And who would pay expensive insurance premiums unnecessarily. Then there is the matter of liability insurance to cover guests and workmen.

Plaintiff did not provide the following information for fear it would totally confuse the Magistrate even more and because it was an intrusion into her personal affairs which already were intruded.

In 1969 Plaintiff became enthralled with the new idea of a planned town and bought a tiny unbuilt townhouse in Columbia Maryland with no intention of ever living in it in the immediate future. She did no furnishing, but wrote to daughter Stacie who had just married that she could use it hoping she would. Stacie declined and Plaintiff rented it for more than a year and then sold it. Although Plaintiff owned it she did not become a citizen of Maryland even though she paid real estate taxes and argued about them before the Tax Assessor and became involved in the Owner's Assoc. Plaintiff lived in a rented apartment in D.C. although she slept on the floor in the townhouse once or twice. That inexpensive tiny house is worth 3 times the cost today. In 1969 Plaintiff claimed domicile in Miami.

In 198o Plaintiff bought a lot at a ski resort in NOrth Carolina. She did plan to use it as soon as she returned to D.C. and to build a house on it. In January 1981 she took daughter Stacie and grandson Blaine there for a quick weekend to choose the lot. Stacie skiid. She never built the house but owned it for years without being there, paying taxes. But she is not domiciled in North Carolina and never has been. It is because of the continuous litigation in the Estates that Plaintiff could not use that property.

The evidentiary importance of this information is that the house in Columbia, Md. is 45 minutes East of D. C., and the ski resort in North Carolina is due West of D.C. Neither is near Miami, Fla. This indicates the intention of Plaintiff to remain in the D.C. vicinity even while litigating for the Estates in 1981 in Miami. And Plaintiff really on buying the ski lot intended to spend her retirement yeaRs there.

The only meaningful intention is that on the day the two lawsuits were filed in Miami district court Plaintiff had a permanent residence in D. C. which she had declared her domicile withdrawing any legal domicile from Miami, Fla. in 1987. The suits filed February 7, 1992.

Plaintiff requests this Court to accept the Petitions just as it did in the case of Tina B. Bennis v.State of MIchigan, recently.

CONCLUSION

The Magistrate's Conclusions were clearly erroneous which the District Judge and appeal panel acepted without review which is the reason this Petition should be granted.

Respectfully submitted,

Edith Broida
Pro Se
P. O. Box 5941
Washington, D. C.
Tel: 301-681-2050
(Answering service)